

## **REMARKS/ARGUMENTS**

Claims 1-8, 12-18, 21-33, 35-41, and 44-51 are pending in the present application. Claims 9-11, 19-20, 34, and 42-43 are canceled and claims 1, 3, 6, 17, 21-23, 25, 28-29, 44-47, and 51 are amended. Applicants are not conceding in this application that those claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious issuance of the application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Support for the amendments to claims 1, 6, 21-23, 28-29, 44-47, and 51 is located at least on page 23, line 14, through page 24, line 8; on page 25, line 15, through page 26, line 13; on page 27, line 15, through page 29, line 14; and in Figure 9. Additional support for the amendments to claims 6, 29, 46, and 51 is located at least on page 20, line 9, through page 23, line 13; and in Figure 5. Support for the amendments to claims 3 and 25 is located at least on page 28, line 19, through page 29, line 14. Support for the amendment to claim 17 is located at least on page 33, line 10, through page 34, line 7. Reconsideration of the claims is respectfully requested.

### **I. Telephone Interview**

Applicants thank Examiner David Duffy and his supervisor for the courtesies extended to Applicants' representatives during the June 11, 2007 telephone interview. During the interview, Applicants' representatives discussed the distinctions between the proposed claim amendments and the cited references. Examiners stated that adding more details to the independent claims would make it less likely to find the features in other references. No agreements were reached. The substance of the telephone interview is included in the following remarks.

### **II. 35 U.S.C. § 112, Second Paragraph: Claims 17 and 18**

The Examiner has rejected claims 17 and 18 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

The Examiner states:

3. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim states that timing data is monitored somehow and then only sent to the proctor device when in excess of the expected response time. This is contradictory to the parent claim 6, which states that the proctor device does the time data monitoring. As no other item is stated to be monitoring the data as well as the contradictory nature of the claim it is indeterminate as to what is occurring. Claim 18, which depends from claim 17, inherits this deficiency as well.

Office Action dated April 27, 2007, p. 2.

Claim 17 is amended to indicate that a test administration system may also provide monitoring. Therefore the rejection of claims 17 and 18 under 35 U.S.C. § 112, second paragraph has been overcome.

**III. 35 U.S.C. § 102, Anticipation: Claims 1, 2, 23, 24, 28, 47 and 48**

The Examiner has rejected claims 1, 2, 23, 24, 28, 47 and 48 under 35 U.S.C. § 102(b) as being anticipated by *Thomas, Method and Apparatus for Improving Performance on Multiple-Choice Exams*, U.S. Patent No. 5,885,087 (March 23, 1999) (hereinafter "*Thomas*"). This rejection is respectfully traversed.

With respect to independent claims 1, 23, 28, and 47, the Examiner states:

6. In regards to claims 1, 23 and 47, *Thomas '087* discloses a computerized testing device that conducts testing for a user whereby a question is presented to the user and the time taken by the user to answer the question is tracked and displayed and may be compared to a predetermined time (2:5-20 and 4:45-65). Examiner contends that the constant display of the elapsed time constitutes an alert and that the predetermined time for a question used to compare to the elapsed time disclosed in the reference would constitute an alert schedule.

7. In regards to claims 2, 24 and 48, *Thomas '087* discloses that the system is a computer program on a computer (3:53-65)

8. In regards to claim 28, *Thomas '087* discloses the features described above for claims 1 and 23 and further describes that the computer used is preferably a microcomputer that also may operate over a network to the user (3:60-65). Computers of the type disclosed would inherently have a bus and must also have a communications system in order to be operable over a network. The reference further discloses memory for storing the program (figure 1, element 10).

Office Action dated April 27, 2007, p. 3.

As amended, claim 1, which is representative of the other rejected independent claims 23, 28, and 47 with regard to similarly recited subject matter, reads as follows:

1. A computer-implemented method for monitoring responses to test questions presented in a data processing system, the method comprising the computer implemented steps of:

identifying presentation of the test questions on the data processing system;  
responsive to the presentation of the test questions on the data processing system, monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented, wherein the elapsed time is an amount of time in attempting to answer a test question;  
and

generating an alert after the test question timing data exceeds a threshold while continuing to present the test question for the test taker to answer, wherein the alert apprises a test taker that the elapsed time is excessive for the test question, wherein the alert is generated based on an alert schedule for the test question, wherein the alert schedule is generated for the test taker based on a customized alert profile for the test taker, and wherein the customized alert profile includes previous performance

information of the test taker, information to associate a level of difficulty of a particular test question with a capability category of the test taker to answer the particular test question, and alert thresholds for the test questions. (emphasis added)

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicant respectfully submits that *Thomas* does not identically show every element of the claimed invention arranged as they are in the claims. Specifically, *Thomas* does not teach or suggest “generating an alert after the test question timing data exceeds a threshold while continuing to present the test question for the test taker to answer, wherein the alert apprises a test taker that the elapsed time is excessive for the test question, wherein the alert is generated based on an alert schedule for the test question, wherein the alert schedule is generated for the test taker based on a customized alert profile for the test taker, and wherein the customized alert profile includes previous performance information of the test taker, information to associate a level of difficulty of a particular test question with a capability category of the test taker to answer the particular test question, and alert thresholds for the test questions,” as recited in claims 1, 23, 28, and 47.

*Thomas* is directed to a computerized learning approach that enables a user to improve their performance on multiple-choice exams. *Thomas* discloses a constant display of an elapsed time. *Thomas* does not mention alert schedules or alert profiles. In the claims of the present invention, the alert is generated based on an alert schedule generated from a customized alert profile for the test taker. In other words, the alert is based on a customized alert threshold for a particular question for the particular test taker. The alert profile, as claimed, includes previous performance information of the test taker, information to associate a level of difficulty of a particular test question with a capability category of the test taker to answer the particular test question, and alert thresholds for the test questions. *Thomas* does not teach the features of claims 1, 23, 28, and 47.

In view of the above, Applicant respectfully submits that *Thomas* does not teach each and every feature of independent claims 1, 23, 28, and 47, as is required under 35 U.S.C § 102(b). In addition, *Thomas* does not teach each and every feature of dependent claims 2, 24, and 48 at least by virtue of their dependency on claims 1, 23, 28, and 47, respectively. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1, 2, 23, 24, 28, 47 and 48 under 35 U.S.C § 102(b).

**IV. 35 U.S.C. § 103, Obviousness: Claims 3 and 25**

The Examiner has rejected claims 3 and 25 under 35 U.S.C. § 103(a) as being unpatentable over *Thomas* in view of *O'Connor et al.*, System, Method and Article of Manufacture for a Goal Based Educational System with Support for Dynamic Tailored Feedback, U.S. Patent No. 6,032,141 (February 29, 2000) (hereinafter "*O'Connor*"). This rejection is respectfully traversed.

Since claims 3 and 25 depend from independent claims 1 and 23, the same distinctions between *Thomas* and the invention recited in claims 1 and 23 apply to dependent claims 3 and 25. In addition, *O'Connor* does not provide for the deficiencies of *Thomas* with regard to independent claims 1 and 23. *O'Connor* is directed to a goal based learning system utilizing a rule based expert training system. *O'Connor* is cited for disclosing the use of JAVA applets for client side processing of an interactive education system. *O'Connor* does not teach or suggest that "generating an alert after the test question timing data exceeds a threshold while continuing to present the test question for the test taker to answer, wherein the alert apprises a test taker that the elapsed time is excessive for the test question, wherein the alert is generated based on an alert schedule for the test question, wherein the alert schedule is generated for the test taker based on a customized alert profile for the test taker, and wherein the customized alert profile includes previous performance information of the test taker, information to associate a level of difficulty of a particular test question with a capability category of the test taker to answer the particular test question, and alert thresholds for the test questions," as recited in claims 1 and 23. Thus, any alleged combination of *Thomas* with *O'Connor* still would not result in the invention recited in claims 1 and 23 from which claims 3 and 25 depend. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 3 and 25 under 35 U.S.C. § 103(a).

In addition, dependent claims 3 and 25 are amended. *Thomas* and *O'Conner*, taken individually or in combination, do not teach or suggest that "the presentation of the test questions is based on levels of difficulty of the test questions and the capability category of the test taker to answer the test questions," as currently amended in dependent claims 3 and 25.

**V. 35 U.S.C. § 103, Obviousness: Claims 4, 5, 26, 27, 49 and 50**

The Examiner has rejected claims 4, 5, 26, 27, 49 and 50 under 35 U.S.C. § 103(a) as being unpatentable over *Thomas*. This rejection is respectfully traversed.

Since claims 4, 5, 26, 27, 49 and 50 depend from independent claims 1, 23, and 47, the same distinctions between *Thomas* and the invention recited in claims 1, 23, and 47 apply to dependent claims 4, 5, 26, 27, 49 and 50. As discussed above, *Thomas* does not teach or suggest that "generating an alert after the test question timing data exceeds a threshold while continuing to present the test question for the test taker to answer, wherein the alert apprises a test taker that the elapsed time is excessive for the test

question, wherein the alert is generated based on an alert schedule for the test question, wherein the alert schedule is generated for the test taker based on a customized alert profile for the test taker, and wherein the customized alert profile includes previous performance information of the test taker, information to associate a level of difficulty of a particular test question with a capability category of the test taker to answer the particular test question, and alert thresholds for the test questions,” as recited in claims 1, 23, and 47. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 4, 5, 26, 27, 49 and 50 under 35 U.S.C. §103(a).

**VI. 35 U.S.C. § 103, Obviousness: Claims 6-8, 11-13, 16, 19, 20, 29-36, 39-43 and 46**

The Examiner has rejected claims 6-8, 11-13, 16, 19, 20, 29-36, 39-43 and 46 under 35 U.S.C. § 103 as being unpatentable over *Thomas* in view of *Hoehn-Saric et al.*, System for Administration of Remotely-Proctored, Secure Examinations and Methods Therefor, U.S. Patent No. 5,915,973 (June 29, 1999) (hereinafter “*Hoehn-Saric*”). This rejection is respectfully traversed.

With respect to independent claims 6, 29, and 46, the Examiner states:

17. In regards to claims 6, 11, 29, 32-34 and 46, *Thomas '087* discloses the testing system described above for claim 1 where the system may operate over a network, which examiner is interpreting to be an interface, with a client (3:63-65). *Thomas '087* lacks in disclosing the use of instant messaging. However, *Hoehn-Saric '973 et al* teaches that the administrator of a test has great flexibility in sending and receiving messages associated with the administration of a test (Col 6 and 8). This flexibility may include sending and responding to messages with the test product users as quickly as the physical interconnection is capable of processing and sending them, making them "instant messages". Therefore, it would have been obvious to one of ordinary skill in the art to provide test examination system as disclosed by *Thomas '087* with messaging capability to take full advantage of the speed of the remote connection with the test product user to provide the ability to send and receive instant messages as taught by *Hoehn-Saric* for the purposes of distributing test evaluations to users in a more timely fashion.

Office Action dated April 27, 2007, p. 5.

As amended, claim 6, which is representative of the other rejected independent claims 29 and 46 with regard to similarly recited subject matter, reads as follows:

6. A computer-implemented method of monitoring a test question response time, comprising the steps of:
  - administering a test to a remotely located user of a client device;
  - receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test;
  - outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user;

wherein said remotely located user can send an instant message to and receive an instant message from said proctor device and wherein said proctor device can send an instant message to and receive an instant message from a plurality of remotely located users, and wherein instant messages are used to communicate and clarify test question wording details, test instructions, and the test question timing data during the test; and alerting the remotely located user when the test question timing data exceeds a predetermined threshold based on an alert schedule for the test question while the remotely located user continues to attempt to answer the test question, wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of a particular test question with a capability category of the remotely located user to answer the particular test question, and a plurality of predetermined thresholds for the plurality of test questions. (emphasis added)

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

As amended, *Thomas* and *Hoehn-Saric*, taken alone or in combination, do not teach or suggest “alerting the remotely located user when the test question timing data exceeds a predetermined threshold based on an alert schedule for the test question while the remotely located user continues to attempt to answer the test question, wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of a particular test question with a capability category of the remotely located user to answer the particular test question, and a plurality of predetermined thresholds for the plurality of test questions,” as recited in independent claims 6, 29, and 46.

As discussed above, *Thomas* does not teach this alerting step as recited in the independent claims. In addition, *Hoehn-Saric* does not provide for the deficiencies of *Thomas* with regard to the alerting step of amended independent claims 6, 29, and 49. *Hoehn-Saric* is directed to a system for controlling the administration of remotely proctored, secure examinations at a remote test station, and a method for administering examinations. *Hoehn-Saric* does not mention alerts, thresholds, alert schedules, or alert profiles.

Additionally, *Thomas* and *Hoehn-Saric*, taken alone or in combination, do not teach or suggest that “said remotely located user can send an instant message to and receive an instant message from said proctor device and wherein said proctor device can send an instant message to and receive an instant message from a plurality of remotely located users, and wherein instant messages are used to communicate and clarify test question wording details, test instructions, and the test question timing data

during the test,” as recited in amended independent claims 6, 29, and 46. The Office Action states that *Thomas* lacks in disclosing the use of instant messaging. *Hoehn-Saric* discloses that audio/visual proctoring data can be transmitted to a central station and displayed so that an administrator can view the testing event. *Hoehn-Saric* does not teach the instant messaging features as recited in amended claims 6, 29, and 46. For example, in amended claims 6, 29, and 46, the proctor device can send an instant message to a plurality of remotely located users to communicate and clarify test instructions.

*Thomas* and *Hoehn-Saric* fail to teach or suggest “alerting the remotely located user when the test question timing data exceeds a predetermined threshold based on an alert schedule for the test question while the remotely located user continues to attempt to answer the test question, wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of a particular test question with a capability category of the remotely located user to answer the particular test question, and a plurality of predetermined thresholds for the plurality of test questions,” as recited in claims 6, 29, and 46. In addition, *Thomas* and *Hoehn-Saric* fail to teach or suggest “said remotely located user can send an instant message to and receive an instant message from said proctor device and wherein said proctor device can send an instant message to and receive an instant message from a plurality of remotely located users, and wherein instant messages are used to communicate and clarify test question wording details, test instructions, and the test question timing data during the test,” as recited in claims 6, 29, and 46. Therefore, the combination of *Thomas* and *Hoehn-Saric* does not teach or suggest these features.

In view of the above, Applicants respectfully request withdrawal of the rejection of independent claims 6, 29, and 46 under 35 U.S.C. §103(a). Additionally, *Thomas* and *Hoehn-Saric*, taken individually or in combination, do not teach or suggest the features of dependent claims 7-8, 11-13, 16, 19, 20, 30-36, and 39-43 at least by virtue of their dependency on independent claims 6, 29, and 46, respectively. Claims 19-20 and 42-43 are canceled. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 6-8, 11-13, 16, 19, 20, 29-36, 39-43 and 46 under 35 U.S.C. §103(a).

## **VII. 35 U.S.C. § 103, Obviousness: Claims 14, 15, 21, 22, 37, 38, 44 and 45**

The Examiner has rejected claims 14, 15, 21, 22, 37, 38, 44 and 45 under 35 U.S.C. § 103 as being unpatentable over *Thomas* and *Hoehn-Saric* as applied to claim 6 above, and further in view of *Kershaw et al.*, System and Methods for Computer Based Testing, U.S. Patent No. 5,827,070 (October 27, 1998) (hereinafter “*Kershaw*”). This rejection is respectfully traversed.

Since claims 14, 15, 21, 22, 37, 38, 44 and 45 depend from independent claims 6 and 29, the same distinctions between *Thomas* and *Hoehn-Saric* and the invention recited in claims 6 and 29 apply to

dependent claims 14, 15, 21, 22, 37, 38, 44 and 45. As discussed above, *Thomas* and *Hoehn-Saric*, taken alone or in combination, fail to teach or suggest “alerting the remotely located user when the test question timing data exceeds a predetermined threshold based on an alert schedule for the test question while the remotely located user continues to attempt to answer the test question, wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of a particular test question with a capability category of the remotely located user to answer the particular test question, and a plurality of predetermined thresholds for the plurality of test questions,” as recited in claims 6, 29, and 46. In addition, *Thomas* and *Hoehn-Saric*, taken alone or in combination, fail to teach or suggest “said remotely located user can send an instant message to and receive an instant message from said proctor device and wherein said proctor device can send an instant message to and receive an instant message from a plurality of remotely located users, and wherein instant messages are used to communicate and clarify test question wording details, test instructions, and the test question timing data during the test,” as recited in claims 6, 29, and 46. *Kershaw* is directed to a system and method for computer based testing. *Kershaw* discloses that, after all of the examinees’ tests are graded, statistical processing may be provided to evaluate tests and test results. *Kershaw* shows an examinee database file that contains information such as test identification information, examinee registration information, and a session start time and a session end time for a test. *Kershaw* does not mention alerts for test questions or alert thresholds for test questions. The Office Action states that *Kershaw* lacks in tracking of question timing data. *Kershaw* does not provide for the deficiencies of *Thomas* and *Hoehn-Saric* with regard to independent claims 6, 29, and 46. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 14, 15, 21, 22, 37, 38, 44 and 45 under 35 U.S.C. §103(a) at least by virtue of their dependency on claims 6 and 29, respectively.

In addition to being dependent on their respective independent claims, amended claims 21-22 and 44-45 are also distinguished over the *Thomas*, *Hoehn-Saric*, and *Kershaw* references based on the specific features recited therein. Claims 21-22 are dependent on independent claim 6; and claims 44-45 are dependent on independent claim 29. *Thomas*, *Hoehn-Saric*, and *Kershaw*, taken individually or in combination, do not teach or suggest “storing a response to the test question from the remotely located user to update the customized alert profile for use in future tests,” as recited in claims 21 and 44; and, in addition, “storing of the timing data for the test question to update timing data for the remotely located user in the customized alert profile for use in future tests,” as recited in claims 22 and 45.

**VIII. 35 U.S.C. § 103, Obviousness: Claim 51**

The Examiner has rejected claim 51 under 35 U.S.C. § 103 as being unpatentable over *Kershaw* in view of *Thomas* and *Hoehn-Saric*. This rejection is respectfully traversed.

As amended, claim 51 reads as follows:

51. A computer-implemented method for monitoring responses to test questions presented in a data processing system, the method comprising the steps of:

administering, from an examination server, a plurality of tests to a plurality of remotely located users on a plurality of user devices and for each test of said plurality of tests that is administered:

establishing a session identification for the administration of the test to the remotely located user, wherein said session identification includes a user identification, a test identifier, and a proctor device identifier;

identifying presentation of the test questions on a user device of said user devices;

responsive to the presentation of the test questions on said user device, monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented, wherein the elapsed time is an amount of time in attempting to answer a test question;

correlating the test question timing data to the administration of the test to the remotely located user based on the session identification;

wherein the test question timing data is output to said proctor device, based on said proctor device identifier, in response to determining that evidence of greater than expected response time to the test question is present; and

generating an alert message after the test question timing data exceeds a threshold while continuing to present the test question for the remotely located user to answer, wherein the alert message apprises the remotely located user that the elapsed time is excessive for the test question, wherein the alert message is generated based on an alert schedule for the test question, wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of a particular test question with a capability category of the remotely located user to answer the particular test question, and a plurality of alert thresholds for the test questions;

wherein the remotely located user can send instant messages to and receive instant messages from a proctor device associated with said examination server and wherein said proctor device can send instant messages to and receive instant messages from the plurality of remotely located users, and wherein instant messages are used to communicate and clarify test question wording details, test instructions, and the test question timing data for the remotely located user during the test. (emphasis added)

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Similarly, as discussed above, *Kershaw, Thomas, and Hoehn-Saric*, taken alone or in combination, fail to teach or suggest “generating an alert message after the test question timing data exceeds a threshold while continuing to present the test question for the remotely located user to answer, wherein the alert message apprises the remotely located user that the elapsed time is excessive for the test question, wherein the alert message is generated based on an alert schedule for the test question, wherein the alert schedule is generated for the remotely located user based on a customized alert profile for the remotely located user, and wherein the customized alert profile includes previous performance information of the remotely located user, information to associate a level of difficulty of a particular test question with a capability category of the remotely located user to answer the particular test question, and a plurality of alert thresholds for the test questions,” and, in addition, *Kershaw, Thomas, and Hoehn-Saric*, taken alone or in combination, fail to teach or suggest that “the remotely located user can send instant messages to and receive instant messages from a proctor device associated with said examination server and wherein said proctor device can send instant messages to and receive instant messages from the plurality of remotely located users, and wherein instant messages are used to communicate and clarify test question wording details, test instructions, and the test question timing data for the remotely located user during the test,” as recited in claim 51. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 51 under 35 U.S.C. §103(a).

**IX. Conclusion**

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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